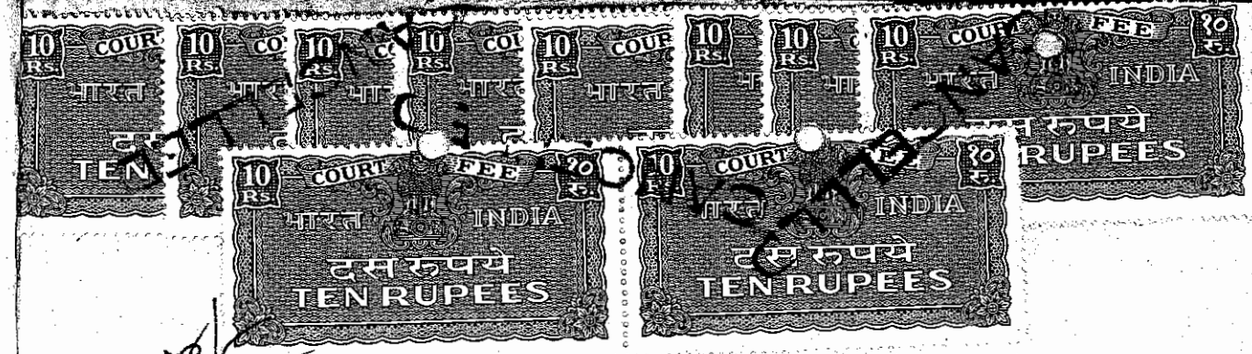




IN THE HIGH COURT OF JUDICATURE : JABALPUR.

Writ Petition No. 1836 /1998.

PETITIONER : K.Ramarao S/o Shri L.Suryanarayan Rao, aged about 45 years, Occupation-Business, R/ Pendra Road, Bilaspur.

VERSUS

RESPONDENTS : 1-State of Madhya Pradesh Through : Secretary, Forest Department, Vallabh Bhawan, Bhopal.

2- The Conservator of Forest Bilaspur Circle, Bilaspur.

3- Divisional Forest Officer, North Bilaspur Van Mandal, Bilaspur.

4- Sub Divisional Officer (Forest), (Territorial), Pendra Road, Bilaspur.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA, FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS AND FOR OTHER SUITABLE WRIT/WRITS. ORDER/ ORDERS OR DIRECTION/DIRECTIONS ETC.

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**W.P.No. 1836/1998**

**Petitioner : K. Ramarao**

**VERSUS**

**Respondents : State of M.P. and others.**

**Shri Ashish Shrivastava and Shri Amrito Das learned counsel for the petitioner.**

**Shri Sandeep Dubey learned GA for respondents.**

**ORDER**

**(Passed on 29-11-2005)**

**Dhirendra Mishra, J**

By the instant petition under Articles 226/227 of the Constitution of India the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to return the vehicle of the petitioner to him in running condition which was seized by the forest authorities in connection with some forest offence and to further direct the respondents to pay compensation and damages for illegal and arbitrary seizure of his vehicle and subsequently retaining it with them without any authority of law.

2. The brief facts of the case are that the petitioner is the owner of the truck which was seized on the ground of illegal transportation of forest goods. An application for interim custody of the truck in question during the confiscation proceedings was also rejected. However, the Competent Authority vide order dated 30.8.1995 directed the confiscation of the truck of the petitioner. The petitioner preferred an appeal against the said order of confiscation along with an application for interim custody of the vehicle. However, the appeal was also dismissed by the Appellate Authority on 11.3.1996. Against order dated 11.3.1996 the petitioner preferred a revision petition in the Court of Sessions Judge Bilaspur. During the pendency of the said revision petition the petitioner also preferred an application for interim custody of the truck in question.

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3. Learned Sessions Judge vide order dated 30.9.1996 allowed the revision petition of the petitioner and quashed the order of confiscation. The revisional Court also directed return of the seized truck to the petitioner. It is alleged that the respondents/authorities kept the vehicle so seized in an unprotected and condemned condition.

4. The petitioner moved an application on 18.10.1996 before the S.D.O (Forest), Pendra Road for returning of the truck vide annexure P-5 upon which the petitioner was directed to take back the truck after completing necessary formalities. However, when the petitioner found that the truck was lying in unprotected and condemned condition, he called a mechanic to check the truck. The mechanic after checking the vehicle opined that it was not at all in running condition as number of parts and machinery of it were stolen and it has turned into junk. Ultimately, the petitioner returned back without taking the truck in question. However, on 3.12.1996 a memo was sent to the Range Officer Pendra Road by the Range Assistant to prepare the Panchnama of the truck on spot. Accordingly, Panchnama was prepared vide annexure P-7 mentioning that the petitioner had come to receive the truck as per the order of the Court but on inspection thereof he went back without the truck. It is further pleaded that a legal notice dated 3.12.1996 as per annexure P-8 was sent to the SDO (Forest) asking him to return the truck to the petitioner in running condition. In reply dated 6.12.1996 to the said legal notice the allegations made by the petitioner were denied stating that he had already directed to return the truck to the petitioner but the petitioner himself was not receiving the same on pretext or the other. The Range Officer vide memo dated 3.9.1997 directed the petitioner to take back the truck after completing necessary formalities vide document of annexure P-11. Panchnama dated 5.9.1997 as per annexure P-12 was prepared by the Range Officer in the presence of the petitioner, his mechanic and other persons as well.

5. It is submitted on behalf of the petitioner that the officers of the respondents illegally seized the vehicle in question and did not keep it

safely and as a result of which various parts of it were missing rendering the same useless.

6. The respondents in their return have stated that as per the order of the Sessions Court the petitioner visited the Forest Authorities on 28.11.1996 and saw the vehicle. Thereafter, Panchnama of annexure R-1 was prepared in the presence of the petitioner and six other persons including the mechanic taken by the petitioner. The petitioner again visited their Office on 5.9.1997 and took away the vehicle under protest reserving his right to file suit after executing the document of annexure R-2 being the receipt of the vehicle. Panchnama as per annexure R-3 was also prepared on the same day and after preparation of Panchnama and execution of receipt the vehicle was handed over to the petitioner. Thus the order of Sessions Court has been duly complied with by the respondents and the vehicle was released accordingly. It is further submitted by the respondents that the relief claimed by the petitioner cannot be granted under writ jurisdiction as the same falls within the domain of the Civil Court and as such the petition for payment of compensation and damages is not maintainable. The petitioner also filed rejoinder to the return and submitted that he did not take back the truck on 5.9.1997 as alleged by the respondents as the truck was not in running condition because of various parts having been stolen. Along with the rejoinder photographs of the vehicle taken on 16.9.2005 have also been filed to demonstrate that the truck is lying in the premises of the respondents in a shattered condition. He has also filed the rate list of various parts of the truck along with the application dated 17.11.2005.

7. Learned counsel for the petitioner submits that from the perusal of the documents annexed with the petition admitted by the respondents it is manifestly clear that the vehicle in question was in custody of the respondents in connection with the forest offence which was subsequently ordered to be returned to the petitioner by the learned Sessions Judge. However, because of the negligence of the officers of the respondents the truck in question completely turned into junk by the time it was ordered to

be returned by the Competent Court which is evident from the documents annexed with the petition as well with the return.

8. Learned counsel for the petitioner submits that so far as the award of compensation and damages under writ jurisdiction are concerned, in appropriate cases the award of damages may be awarded in the writ petition also and in support of this contention he relies upon a decision of the Supreme Court in the matter of **ABL Interntional Ltd and another Vs. Export Credit Guarantee Corporation of India Ltd and others reported in (2004) 3 SCC 553** . Relying on the above decision of the Apex Court learned counsel for the petitioner submits that normally a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in exercise of its jurisdiction under Article 226 of the Constitution, but there is no absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. It is further argued that in the instant case the factum of seizure and subsequent release by the competent Court is not disputed. It is also not disputed that at the time of taking delivery of the vehicle in question it was not found in running condition as is evident from the Panchnama filed by the respondents also. So far as the quantum of compensation is concerned, the petitioner has annexed the rate list of various parts which were found missing from the truck vide application dated 17.11.2005.

9. On the other hand learned counsel for the respondents vehemently opposes the contention of the petitioner and submits that the vehicle was ordered to be handed over to the petitioner way back in the year 1996 and he took the possession of the same also on 5.9.1997 reserving his right to file the suit and on that day Panchnama was also prepared which bears the signature of the petitioner as also his advocate and other witnesses. In this document itself the petitioner has mentioned that he obtained the truck and he would take the same with him within a week there from as per his convenience. However, in stead of taking the vehicle from the place where it is lying he is filed the instant petition. It is further submitted that the petitioner has filed this petition without quantifying the damages

and the same can be ascertained only by way suit in the court of competent jurisdiction as it is a disputed question of fact which requires recording of evidence.

10. I have learned counsel for the parties and gone through the material available on record.

11. From the pleadings of the respective parties it transpires that the petitioner did not take the vehicle on the first occasion. However, subsequently he got the vehicle inspected with the assistance of a mechanic and found that number of parts were missing from it as is detailed in document of annexure R-3. However, he obtained the same under protest reserving his right to file suit. Thereafter in stead of filing suit the instant petition has been filed by him.

12. The only question that has to be decided in this case is whether claim of the petitioner for compensation and damages against the respondents may be settled on the basis of pleadings and documents available on record or not. There is no doubt that in appropriate cases where damages/claims are quantified and there is no dispute regarding the same and the only question to be decided is the entitlement of the same, in such cases in writ petition also damages may be awarded. But in the instant case there is not only a dispute regarding entitlement of the damages but another disputed fact is also involved such as - whether the vehicle in question was in fact obtained by the petitioner as per the order of the Competent Court or who in fact was responsible for the delay in the delivery of the vehicle to the petitioner as the respondents have stated in their return that they were ready and willing to return the vehicle as per the direction of the Sessions Court in the year 1996 itself and the same could not be returned because of deliberate in-action on the part of the petitioner.

13. In view of the aforesaid discussion I am of opinion that the instant case is not one where the petitioner can be awarded compensation for the alleged wrong done by the respondents resulting in damage to the vehicle while it was in the custody of the respondents.

14. Resultantly, it is held that the petitioner can not be awarded damages or compensation by the instant petition as disputed question arising for adjudication can not be decided in the instant proceedings.

15. With the aforesaid observations the petition is disposed of.

Sd/-
Dhirendra Mishra
Judge